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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/562,850	05/08/2006	Jose Ramon Vazquez Ruiz Del Arbol	U 016092-3	4104
140	7590	06/14/2010		
LADAS & PARRY LLP 26 WEST 61ST STREET NEW YORK, NY 10023				
EXAMINER				
KATCHEVES, BASIL S				
ART UNIT		PAPER NUMBER		
3635				
NOTIFICATION DATE		DELIVERY MODE		
06/14/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

nyuspatactions@ladas.com

**Office Action Summary****Application No.**

10/562,850

**Applicant(s)**VASQUEZ RUIZ DEL ARBOL,  
JOSE RAMON**Examiner**

BASIL KATCHEVES

**Art Unit**

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 May 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S.**

**Patent No. 1,978,278 to O'Brien as in the previous action.**

Regarding claim 1, O'Brien discloses a device for forming joints in concrete, the device having trays (fig. 1: 11, 15, 12) in that the device comprise a plurality assembled on stiff linear members (24) leaving gaps between the trays.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 2-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 1,978,278 to O'Brien as in the previous action.**

Regarding claim 2, O'Brien discloses the trays as having flat portion but does not particularly disclose the angle they are set in regards to the concrete. Applicant fails to show criticality for specifically claimed dimensions, therefore it would have been an obvious design choice to use the angles such as specified in these claims.

Regarding claim 3, O'Brien discloses the trays as configured by pairs of semi-trays (fig. 3: 19) with a broken surface with upper and lower portions at an angles, but does not disclose the angle with respect to the ground. Applicant fails to show criticality for specifically claimed angles, therefore it would have been an obvious design choice to use the dimensions such as specified in these claims.

Regarding claim 4, O'Brien discloses supports (21) for the trays with at least two orifices (22) at their bases for allowing the passage of stiff linear members (24) through them.

Regarding claim 5, O'Brien discloses the trays as having a conduit (22) for passage of stiff linear members.

Regarding claim 6, O'Brien discloses openings (26) in a the trays but not a plurality of openings throughout the trays. It would have been obvious to one having ordinary skill in the art at the time the invention was made to us a plurality of openings, since it has been held that a mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. V. Bemis Co.*, 193 USPQ 8.

Regarding claims 7, 8 and 11, O'Brien discloses joints (fig. 1: joint at 19) along the device and at the upper portions of the trays.

Regarding claim 9, O'Brien discloses supports (21) for the trays that have two orifices (22) for stiff linear members (24).

Regarding claim 10, O'Brien discloses the trays as having conduits (22) for the passage of the stiff linear members (24).

### **Response to Arguments**

Applicant's arguments filed 5/19/10 have been fully considered but they are not persuasive. The applicant argues the rejection with the prior art, O'Brien, and states the prior art can not have alternating members on either side of a superficial crack line. The applicant should note that there is no crack line claimed in the instant application. The structure of O'Brien meets the structural limitations of the instant application, as claimed, for the trays. It is inherently possible for the structure of O'Brien to be laid in a manner that spans a crack. The applicant also argues that

O'Brien does not have stiff linear members with gaps between them. The applicant should note that the stiff members of O'Brien, (24) have gaps (spaces between trays not labeled in the drawings, these are also between components 21). The applicant argues the intended use of the O'Brien patent. The applicant should note, as above, that the structural limitations of the instant application, as claimed, are met by the structure of O'Brien. Regarding the angle of the trays with respect to the concrete, the applicant should note that there is no concrete claimed for there to be an angle and O'Brien is inherently capable of being positioned in a manner such that the angle claimed is attained. Also, the applicant should note that a slight change in angle is not novel and is typically considered as an obvious design choice.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Basil Katcheves whose telephone number is (571) 272-6846. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot, can be reached at (571) 272-6777.

/Basil Katcheves/

Primary Examiner, Art Unit 3635